IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1850 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

V.S. SHAH WORKING AS MANAGER

Versus

ASSISTANT GENERAL MANAGER AND DISCIPLINARY AUTHORITY

Appearance:

1. Special Civil Application No. 1850 of 2002

MR DJ BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

MR KM PATEL for Respondent No. 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 03/05/2002

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner has mainly challenged the

chargesheet dated 6.5.1998 and the final order of punishment of the appellate authority reducing him in the basic pay by eight stages.

2. The respondent-Bank had, by chargesheet dated 6.5.1998, levelled several charges and, after holding of a departmental enquiry and by an elaborate finding, it was held that the charges of willful insubordination and disobedience of lawful and reasonable order of superior, the charge of doing acts prejudicial to the interest of the bank and the charge of doing acts unbecoming of a bank officer were proved. The petitioner had submitted a detailed representation in response to the enquiry authority's findings and, after considering the same, the disciplinary authority had imposed the punishment of reduction to a lower grade, i.e. Junior Management Grade Scale I in the basic pay of Rs.5,980/-, with immediate effect. The petitioner had, therefore, approached the appellate authority which, after considering the grounds of appeal, in an elaborate order, confirmed most of the findings, but found the punishment to be harsh and, therefore, reduced the same by the impugned order dated 25.10.2000. The petitioner then applied for review of the appellate authority's order and the reviewing authority, different from and higher than the appellate authority, found the charge of persistently disobeying the instructions of the superior, not attending the meeting for which he was called and not furnishing the inf[ormation required, to be serious warranting severe punishment; but refused to interfere with the punishment as the disciplinary authority and the appellate authority had already taken a lenient view.

3. The learned counsel Mr.D.J.Bhatt argued the petition mainly on the grounds that the chargesheet was bad in law insofar as the incidents for which the petitioner was already pardoned were included; and that the petitioner was singled out for punishment for the alleged misconduct which were committed by other officers also. He assailed the enquiry mainly on the ground that witnesses necessary to prove the documents on record were not examined and the petitioner was deprived of his fundamental right to cross-examine such witnesses. The findings were assailed again on the ground that the documents on the basis of which the charges were held to have been proved were not proved by examining the witnesses. And, the order of punishment was assailed on the ground that a second notice to show cause against the proposed punishment was not served upon him. A few unsubstantiated allegations of corruption were also made against the enquiry officer to discredit his findings.

In reply to queries made to specifically point out any serious illegality or violation of rules or principles of natural justice in the conduct of enquiry and imposition of punishment, only the above general submissions were repeated and sought to be supported by various judgments without reference to the actual material on record.

4. The learned counsel Mr.Patel submitted on behalf of the respondent that burden of proving the charges levelled against the petitioner was duly discharged and no perversity could be pointed out by the petitioner. Relying upon the ratio of the judgment in ORISSA MINING CORPORATION AND ANOTHER v. ANANDA CHANDRA PRUSTY [(1996) 11 SCC 600], he submitted that, in service law, there is no such thing as an absolute burden of proof, always lying on the department in a disciplinary enquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case, it might shift on the delinquent officer depending upon his explanation. In the context of this case, he submitted that the documentary evidence brought on record was not disputed and it was not necessary to examine any witness to prove such documents or to afford an opportunity of cross-examination of such witness by the petitioner.

4.1 The learned counsel Mr.Patel relied upon the following observations of the Supreme Court in TARA CHAND VYAS v. CHAIRMAN & DISCIPLINARY AUTHORITY AND OTHERS [(1997) 4 SCC 565]:-

> "3. Shri B.D.Sharma, learned counsel for the petitioner, contends that for proof of the charges none of the witnesses was examined nor any opportunity was given to cross-examine them and the petitioner has disputed his liability. As a consequence, the entire enquiry was vitiated by manifest error apparent on the face of the record. We find no force in the contention. The thrust of the imputation of charges was that he had not discharged his duty as a responsible officer to safeguard the interest of the Bank by securing adequate security before the grant of the loans to the dealers, and had not ensured supply of goods to the loanees. It is based upon the documentary evidence which has already been part of the record and copies thereof had been supplied to the petitioner. Under those circumstances, we do not think that there is any manifest error apparent on the face of the record warranting interference. It is then contended

that no reasons have been given in support of the conclusions to substantiate the charges. The enquiry officer had elaborately discussed each charge and given reasons which were considered by the disciplinary authority and reached the conclusion that the charges were proved. So had the appellate authority. They are not like a civil court.

4. The special leave petition is accordingly dismissed."

4.2 He further submitted that there was no statutory requirement of issuing a second notice to show cause as regards imposition of punishment and the requirement of furnishing the enquiry report was admittedly complied. As regards the petitioner's contention that the provisions of the Bank's Discipline and Appeal Regulations stood modified or amended by virtue of the circular dated 3.4.1991 (at Annexure-S), he submitted that it neither applied in the facts of this case nor could it amend the statutory regulations. It was submitted that the petitioner was not a member of the award staff who were covered by a separate settlement. The respondent relied upon the judgment of this Court in LALITKUMAR R. PARMAR v. UNION BANK OF INDIA AND ANOTHER [1996 (1) G.L.H. 306], in which it is clearly held that in absence of a provision in the regulation indicating necessity of a second show cause notice, non-issuance of such notice would not be violative of the principles of natural justice.

4.3 The parameters of judicial review in such cases are laid down by a Bench of three Judges of the Apex Court in B.C.CHATURVEDI v. UNION OF INDIA [(1995) 6 SCC 749], in which it is summed up as under

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold

> inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the findings and mould the relief so as to make it appropriate to the facts of each case."

5. The contentions of the petitioner briefly summarised in para 3 hereinabove are squarely covered by the above legal dicta and, therefore, no reason is made out to interfere with the final order of punishment in exercise of the extraordinary jurisdiction of this Court. The reliance placed by the petitioner on the judgments in SAIT TARAJEE KHIMCHAND v. YELAMARTI SATYAM [AIR 1971 SC 1865]; PARSHOTTAM RAJABHAI v. STATE OF GUJARAT [1994 (1) GLR 93]; DHANAJAY REDDY v. STATE OF KARNATAKA [2001 (4) SCC 9]; and STATE OF U.P. v. RAVINDER NATH CHATURVEDI [1995 (3) Suppl SCC 592] is misplaced since the ratio therein did not apply in the facts of this case. Accordingly, the petition is dismissed at the threshold and Notice is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)